

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 OAKLAND DIVISION  
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6 HUGO MARTIN TORRES,  
7 Plaintiff,  
8 vs.  
9 D. BRADBURY, et al.,  
10 Defendants.

Case No: C 13-0344 SBA (PR)

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

11 **I. INTRODUCTION**

12 Plaintiff, a former state prisoner, brings the instant action, pursuant to 42 U.S.C.  
13 § 1983, alleging due process violations stemming from his placement and retention in  
14 administrative segregation (“ad-seg”) at Pelican Bay State Prison (“PBSP”) in 2012.

15 The parties are presently before the Court on an unopposed motion to dismiss filed  
16 under Federal Rule of Civil Procedure 12(b)(6) by Acting Chief Deputy Warden D.  
17 Bradbury and Institutional Gang Investigator J. Hernandez (collectively “Defendants”).  
18 Having read and considered the papers submitted, and being fully informed, the Court  
19 GRANTS Defendants’ motion to dismiss.

20 **II. BACKGROUND**

21 On May 25, 2012, Defendant Hernandez entered Plaintiff’s cell while he was  
22 urinating and ordered him to turn around. When Plaintiff refused to comply, Defendant  
23 Hernandez grabbed his left arm from behind and pulled him backwards out of his cell—as  
24 he was urinating. Plaintiff threatened to file a 602 inmate appeal against Defendant  
25 Hernandez for her actions.

26 On June 1, 2012, Plaintiff was placed on a Contraband Surveillance Watch for an  
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1 alleged inmate manufactured weapon that allegedly was in his rectum. Dkt. 1 at 5, 11.<sup>1</sup>  
2 After a search on June 6, 2012, there was no weapon found on Plaintiff's person or in his  
3 cell. However, Plaintiff was retained in ad-seg.

4 On June 14, 2012, Plaintiff attended an Institutional Classification Committee  
5 ("ICC") hearing regarding his placement in ad-seg. Plaintiff was informed that he was  
6 being held for possession of a deadly weapon. Defendant Bradbury advised him that  
7 Defendant Hernandez was going to "head the investigation." Id. at 6. Plaintiff objected to  
8 Defendant Hernandez heading the investigation because he felt that she would "potentially  
9 jeopardize the integrity of the investigation," especially after the aforementioned May 25,  
10 2012 incident. Id. Defendant Bradbury ignored Plaintiff's objection; therefore, Plaintiff  
11 claims he was held in ad-seg based on "false information [Defendant Hernandez]  
12 fabricated." Id.

13 On September 20, 2012, the ICC concluded that Plaintiff "had no fault/involvement  
14 in possession of a weapon," and he was released back into general population. Id.

15 On January 25, 2013, Plaintiff filed the instant action. Upon reviewing the  
16 complaint, the Court found Plaintiff had stated cognizable due process claims against  
17 Defendants and ordered service of the complaint. Dkt. 7 at 3-5. All other claims were  
18 dismissed. Id.

19 In their motion to dismiss, Defendants argue that: (1) Plaintiff has failed to  
20 demonstrate that his placement in ad-seg implicated a protected liberty interest; and  
21 (2) Plaintiff has no constitutionally guaranteed right to be free from any alleged fabrication  
22 of charges by prison staff.

### 23 **III. LEGAL STANDARD**

24 A complaint must contain a "short and plain statement of the claim showing that the  
25 pleader is entitled to relief." Fed. R. Civ. P. 8(a). When considering a motion to dismiss  
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27  
28 <sup>1</sup> Page number citations refer to those assigned by the Court's electronic case management filing system and not those assigned by Plaintiff.

1 under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the  
 2 complaint does not give the defendant fair notice of a legally cognizable claim and the  
 3 grounds on which it rests. See Bell Atl. Corp. v. Twombly, 550 U.S. 544 (1964).

4 In considering whether the complaint is sufficient to state a claim, the district court  
 5 must accept all factual allegations as true and construe them in the light most favorable to  
 6 the plaintiff. Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197, 2200 (2007); NL Indus.,  
 7 Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). However, the court need not accept as  
 8 true allegations that are legal conclusions, unwarranted deductions of fact or unreasonable  
 9 inferences. See Sprewell v. Golden State Warriors, 266 F.3d 979, 988, amended, 275 F.3d  
 10 1187 (9th Cir. 2001). Dismissal can be based on the lack of a cognizable legal theory or the  
 11 absence of sufficient facts alleged under a cognizable legal theory. Balistreri v. Pacifica  
 12 Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

13 A plaintiff may negate his claim by including unnecessary details that contradict it.  
 14 Sprewell, 266 F.3d at 988. A court, for example, is not required to accept as true  
 15 conclusory allegations which are contradicted by documents referred to in the complaint.  
 16 Bell Atl. Corp., 550 U.S. at 557; Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96  
 17 (9th Cir. 1998). “[C]onclusory allegations without more are insufficient to defeat a motion  
 18 to dismiss for failure to state a claim.” McGlinchy v. Shell Chemical Co., 845 F.2d 802,  
 19 810 (9th Cir. 1988). A court “is not required to accept legal conclusions cast in the form of  
 20 factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.”  
 21 Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994).

## 22 **IV. DISCUSSION**

### 23 **A. DUE PROCESS CLAIM RELATING TO PLACEMENT IN AD-SEG**

24 Interests that are procedurally protected by the Due Process Clause may arise from  
 25 two sources—the Due Process Clause itself and laws of the states. See Meachum v. Fano,  
 26 427 U.S. 215, 223-27 (1976). Changes in conditions so severe as to affect the sentence  
 27 imposed in an unexpected manner implicate the Due Process Clause itself. See Sandin v.  
 28 Conner, 515 U.S. 472, 484 (1995) (citing Vitek v. Jones, 445 U.S. 480, 493 (1980) (transfer

1 to mental hospital), and Washington v. Harper, 494 U.S. 210, 221-22 (1990) (involuntary  
2 administration of psychotropic drugs)). The hardship associated with ad-seg, such as loss  
3 of recreational and rehabilitative programs or confinement to one's cell for a lengthy period  
4 of time, is not so severe as to violate the Due Process Clause itself. See Toussaint v.  
5 McCarthy, 801 F.2d 1080, 1091-92 (9th Cir. 1986), cert. denied, 481 U.S. 1069 (1987),  
6 abrogated on other grounds by Sandin, 515 U.S. 472.

7  
8 Deprivations that are less severe or more closely related to the expected conditions  
9 of confinement may amount to deprivations of a procedurally protected liberty interest,  
10 provided (1) that state statutes or regulations narrowly restrict the power of prison officials  
11 to impose the deprivation, and (2) that the liberty in question is one of "real substance."  
12 See Sandin at 515 U.S. at 477-87. "Real substance" will generally be limited to freedom  
13 from (1) restraint that imposes "atypical and significant hardship on the inmate in relation  
14 to the ordinary incidents of prison life," id. at 484, or (2) state action that "will inevitably  
15 affect the duration of [a] sentence," id. at 487.

16 Placement in ad-seg pending investigation of disciplinary charges does not implicate  
17 a protected liberty interest absent a showing that the conditions of confinement constituted  
18 an "atypical and significant hardship" "in relation to the ordinary incidents of prison life."  
19 Resnick v. Hayes, 213 F.3d 443, 448-49 (9th Cir. 2000) (quoting Sandin); see also May v.  
20 Baldwin, 109 F.3d 557, 565 (9th Cir. 1997) (mere placement in ad-seg not enough to state  
21 claim after Sandin). Sandin requires a factual comparison between conditions in the  
22 plaintiff's former status and his new status, examining the hardship caused by the  
23 challenged action in relation to the basic conditions of life as a prisoner. Jackson v. Carey,  
24 353 F.3d 750, 755 (9th Cir. 2003).

25 Plaintiff claims that his placement in ad-seg from June 6, 2012 to September 20,  
26 2012, violated his due process rights because the charge was eventually dropped. However,  
27 Plaintiff has failed to show that the conditions of his confinement in ad-seg constituted an  
28 "atypical and significant hardship" "in relation to the ordinary incidents of prison life."  
Resnick, 213 F.3d at 448-49. Plaintiff, who has not opposed the motion to dismiss, has

1 neither alleged any such hardships that he experienced in ad-seg nor compared such  
2 conditions to his conditions in general population. He has also failed to show that there  
3 was a “change[] in conditions . . . so severe” as to affect the sentence imposed in an  
4 unexpected manner. See Sandin, 515 U.S. at 484. In fact, Plaintiff has since been paroled  
5 and released from custody. Dkt. 6.

6 Plaintiff has failed to state a claim regarding his placement in ad-seg because the  
7 complaint does not allege that the deprivation Plaintiff suffered is one of “real substance”  
8 as defined in Sandin. Therefore, the Court GRANTS Defendants’ motion to dismiss as to  
9 Plaintiff’s due process claim relating to his placement in ad-seg.

10 **B. DUE PROCESS CLAIM RELATING TO FABRICATION OF WEAPON CHARGE**

11 Plaintiff alleges that he was denied his due process rights because his  
12 aforementioned placement and retention in ad-seg was based on “false information  
13 [Defendant Hernandez] fabricated.” Dkt. 1 at 6. As explained above, prison officials  
14 conducted an investigation and eventually released him from ad-seg upon finding that  
15 Plaintiff had “no fault/involvement” in the weapon charge. Id.

16 A prisoner has no constitutionally guaranteed immunity from being falsely or  
17 wrongly accused of conduct which may result in the deprivation of a protected liberty  
18 interest. See Sprouse v. Babcock, 870 F.2d 450, 452 (8th Cir. 1989); Freeman v. Rideout,  
19 808 F.2d 949, 951 (2d Cir. 1986), cert. denied, 485 U.S. 982 (1988). As long as a prisoner  
20 is afforded procedural due process in the disciplinary hearing, allegations of a fabricated  
21 charge fail to state a claim under § 1983. See Hanrahan v. Lane, 747 F.2d 1137, 1140-41  
22 (7th Cir. 1984). Moreover, the fact that a prisoner may have been innocent of the charges  
23 does not raise a due process issue. The Constitution demands due process, not error-free  
24 decision-making. See Ricker v. Leapley, 25 F.3d 1406, 1410 (8th Cir. 1994).

25 Here, the record shows that on June 6, 2012, Plaintiff was afforded written notice in  
26 the form of a one-page “Administrative Segregation Unit Placement Notice,” which stated  
27 that he was being placed in ad-seg based on an “ongoing investigation into [his] Possession  
28 of a Deadly Weapon.” Dkt. 1 at 23. On June 14, 2012, Plaintiff attended an ICC hearing,

1 in which he was advised that he was being held in ad-seg on the pending weapon charge  
2 and that Defendant Hernandez was going to head the investigation. After the investigation  
3 revealed that Plaintiff was not at fault, the charge was dropped on September 20, 2012.  
4 Therefore, the Court GRANTS Defendants' motion to dismiss Plaintiff's due process claim  
5 that Defendant Hernandez fabricated the weapon charge, and this claim is DISMISSED for  
6 failure to state a claim for relief.

7 **V. CONCLUSION**

8 For the reasons stated above,

9 **IT IS HEREBY ORDERED THAT:**

10 1. Defendants' motion to dismiss is GRANTED as to all claims. Dkt. 14.  
11 Plaintiff's complaint is DISMISSED WITH PREJUDICE for failure to state a claim upon  
12 which relief may be granted.


13 2. Further, this Court CERTIFIES that any motion for leave to proceed in forma  
14 pauperis on appeal from this Order would not be taken "in good faith" pursuant to 28  
15 U.S.C. § 1915(a)(3). See Coppedge v. United States, 369 U.S. 438, 445 (1962); Gardner v.  
16 Pogue, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on  
17 appeal only if appeal would not be frivolous).

18 3. The Clerk of the Court shall enter judgment, terminate all pending motions,  
19 and close the file.

20 4. This Order terminates Docket No. 14.

21 **IT IS SO ORDERED.**

22 Dated: February 2, 2015

23   
24 SAUNDRA BROWN ARMSTRONG  
United States District Judge

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